

Confidential – Subject to The Protective Order
Richard Markowitz – April 8, 2021

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:)

5 CUSTOMS AND TAX ADMINISTRATION OF)
6 THE KINGDOM OF DENMARK)
7 (SKATTEFORVALTNINGEN) TAX REFUND)
8 SCHEME LITIGATION)

9 This document relates to case nos.)
10 19-cv-01783; 19-cv-01788; 19-cv-01794;)
11 19-cv-01798; 19-cv-01918)

12 C O N F I D E N T I A L

13 SUBJECT TO THE PROTECTIVE ORDER

14
15
16 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL

17 EXAMINATION OF

18 RICHARD MARKOWITZ

19 DATE: April 8, 2021

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25 REPORTED BY: MICHAEL FRIEDMAN, CCR

1 RICHARD MARKOWITZ,
2 called as a witness, having been first
3 duly sworn according to law, testifies as follows:

7 EXAMINATION BY MR. WEINSTEIN:

8 Q Good morning, Mr. Markowitz.

[illegible]

25 Q Mr. Markowitz, my name is Marc

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1 And ultimately they didn't find you
2 another leverage provider?

3 MR. BONGIORNO: Objection.

4 A I disagree with the premise of your
5 question.

6 Q Okay. Ultimately, were they able
7 to provide -- to find another leverage
8 provider?

9 A No.

10 Q Can you turn, please, to
11 Exhibit 2116?

12 MR. WEINSTEIN: Mark this as 2116.

13 (Whereupon the above mentioned was
14 marked for Identification.)

15 MR. BONGIORNO: Marc, maybe after
16 you finish with this one, we can take
17 our next break?

18 MR. WEINSTEIN: Yeah.

19 Q So Mr. Shah sends you an e-mail in
20 April of 2012 asking if you have a pension
21 fund in the U.S. that can be used for trading
22 equities and derivatives.

23 Do you recall receiving that from
24 him?

25 A Yes.

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1 Q At the time that you got it, did
2 you have a pension fund in the U.S. that
3 could be used for trading equities and
4 derivatives?

5 A I don't recall.

6 Q Okay. Did you understand that this
7 question was in the context of dividend --
8 the dividend arbitrage strategy?

9 A Yes.

10 Q Do you recall what your response
11 was to Mr. Shah?

12 A No.

13 Q Did you end up setting up a pension
14 fund in the U.S. to be used for trading
15 equities or derivatives as part of a dividend
16 arbitrage strategy?

17 A Yes.

18 Q Okay. And what pension plans did
19 you set up to be used for that purpose?

20 A RJM Capital Pension Plan, among
21 others.

22 Q When was RJM Capital Pension Plan
23 established?

24 A Sometime in 2013.

25 Q Okay. Did -- along with your

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1 been on a phone call. But either our
2 attorneys dealt with them directly or
3 Mr. LaRosa had the primary contact with the
4 reclaim agents.

5 Q Okay. Do you know if Acupay had
6 any arrangements with Solo Capital, any sort
7 of deals on doing -- withdrawn.

8 Do you know if Acupay had any deals
9 with Solo Capital to be the payment agent for
10 the pension plans in this strategy?

11 A Can you clarify what you mean by
12 "deal?"

13 Q Well, for each plan that used a
14 payment agent such as Acupay, the pension
15 plan had to enter into an agreement with
16 Acupay.

17 Correct?

18 A Yes.

19 Q All right. And it paid Acupay some
20 fee which was based on a percentage of the
21 reclaim.

22 Is that right?

23 A Sometimes it was a fixed amount or
24 a capped amount, but yes.

25 Q Okay. And that's the same for

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:)
5)
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9)

CUSTOMS AND TAX ADMINISTRATION OF)
THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
SCHEME LITIGATION)

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19-cv-01798; 19-cv-01918)

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11
12 C O N F I D E N T I A L

13 SUBJECT TO THE PROTECTIVE ORDER
14
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16 CONTINUED REMOTE VTC VIDEOTAPED DEPOSITION UNDER
17 ORAL EXAMINATION OF
18 RICHARD MARKOWITZ
19 VOLUME II

20 DATE: April 9, 2021
21
22
23
24

25 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 R I C H A R D M A R K O W I T Z,

2 called as a witness, having been first
3 duly sworn according to law, testifies as follows:

4 CONTINUED EXAMINATION BY MR. WEINSTEIN:
5

6 Q Mr. Markowitz, if you can turn to
7 Exhibit 2133, please?

8 Did each of the partnerships listed
9 in this exhibit earn profits from the Danish
10 dividend arbitrage strategy?

11 A (Witness reviewing.)

12 MR. BONGIORNO: Objection.

13 A I don't recall.

14 Q Did the partnerships earn profits
15 from any other investing activity other than
16 the Danish dividend arbitrage strategy?

17 A Yes.

18 Q What other investment strategies
19 did these partnerships earn money from?

20 A Dividend arbitrage investments.

21 Q So their profits were generated
22 entirely by dividend arbitrage strategies?

23 A Yes.

24 Q Did those strategies involve
25 Denmark and Belgium?

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1 break now?

2 MR. BONGIORNO: Sure. Marc, my
3 thought is when we come back, maybe
4 we'll do a shorter session and then do a
5 lunch break so that we're not waiting
6 too long. But it seems a little too
7 early for lunch right now.

8 MR. WEINSTEIN: Yeah, that's a good
9 plan.

10 THE VIDEOGRAPHER: Stand by. The
11 time is 12:05 p.m. and we're going off
12 the record.

13 (Brief recess taken.)

14 THE VIDEOGRAPHER: Stand by. The
15 time is 12:14 p.m. and we're back on
16 record.

17 Q Mr. Markowitz, did you tell Joseph
18 Herman that he did not have to provide any
19 money in order to participate in this
20 investment strategy?

21 A I don't recall.

22 Q Can you please turn to
23 Exhibit 1777?

24 A Can you try to help us find what
25 book that's in?

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1 Q It would be at the front of a book.

2 I don't know which book.

3 MR. BONGIORNO: I think it's the
4 first book. Yeah. It's Day 1,
5 Volume 1.

6 Q So this is an e-mail from
7 Mr. Klugman to a number of people, including
8 you. "Arbitrage Instructions and Questions."

9 Who are -- who is Matthew Cooper?

10 A An individual introduced to me by
11 Robert Klugman.

12 Q What role, if any, did Mr. Cooper
13 have in connection with the dividend
14 arbitrage strategy?

15 A He assisted the pension plans in
16 executing trades.

17 Q And who is Ira Reibeisen?

18 A An individual introduced to me by
19 Robert Klugman.

20 Q Did he have the same role as
21 Mr. Cooper?

22 A Yes.

23 Q Do you recall being part of any
24 discussions about trading instructions for
25 this dividend arbitrage trading?

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1 A I just remember this e-mail. I
2 don't recall being on a -- having a
3 conversation about arbitrage instructions.

4 Q Okay. And is the attachment to the
5 e-mail meant to provide guidance for how
6 Mr. Cooper and Mr. Reibeisen would do the
7 trading for the pension plans?

8 A How they would execute trading
9 instructions on behalf of the plans, yes.

10 Q Okay. At the bottom of Page 1,
11 there are three questions that Mr. Cooper
12 raises. And the second one is, "How do we
13 reach POGO?"

14 Do you know who POGO is?

15 A Yes.

16 Q Who is that?

17 A An employee of Solo Capital.

18 Q Do you know his name?

19 A I believe it's Mark Anderson,
20 something like that. I don't have an exact
21 recollection.

22 Q Okay. Does Mark Paterson ring a
23 bell?

24 A Yes.

25 Q Okay.

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1 A Better bell.

2 Q Okay. Do you think that's who
3 "POGO" is?

4 A I believe so.

5 Q All right. If you turn to the next
6 page, step one in the trading day is around
7 7:00 a.m. to request liquidity using 34
8 e-mails.

9 And is the 34 -- the 34 e-mails are
10 for the 34 pension plans that were
11 participating prior to adding six more?

12 A Yes. One request for each client.

13 Q Okay. Who was the request for
14 liquidity supposed to be sent to?

15 A A broker.

16 Q Okay. How would Mr. Cooper or
17 Mr. Reibeisen know which broker to reach out
18 to for liquidity, or was that left to their
19 discretion?

20 A Can you rephrase the question,
21 please?

22 Q How did Mr. Cooper and
23 Mr. Reibeisen know what broker to reach out
24 to for liquidity?

25 A They would have received

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1 information along with the allocations of the
2 market liquidity we received. We would have
3 received information from Solo regarding
4 which brokers could source that liquidity.

5 Q Okay. So Solo -- what information
6 would Solo provide to Cooper and Reibeisen in
7 the morning?

8 A Allocation of shares and
9 information on broker or other counterparties
10 for the hedging transactions to send the
11 e-mails to and trade with.

12 Q Okay. So would Solo select the
13 security or the issuer that was going to be
14 traded in?

15 A I don't understand your question.

16 Q Well, in order to seek liquidity,
17 you have to be seeking it in a particular
18 stock.

19 Right?

20 A Yes.

21 Q Okay. Would Solo select the stock
22 for which Cooper would send the liquidity
23 e-mail?

24 A The stock was common knowledge. It
25 was a limited number of publicly traded

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1 European stocks who were going to be

2 declaring dividends.

3 So all parties, including anyone

4 looking at a Bloomberg terminal would know

5 when a company was getting ready to pay a

6 dividend. And we would receive information

7 about allocations of that particular security

8 from Solo.

9 Q Okay. So if TDC's dividend date
10 was coming up, how would Mr. Cooper know that
11 the plans wanted to trade in TDC securities?

12 A The plans would have given them
13 advice or instructions that they were
14 interested in trading dividend-paying stocks
15 in Denmark and other countries. And there's
16 a list of — a limited list of publicly
17 traded companies that pay dividends.

18 Q Okay. And then, in order for Solo
19 to know that it needs to provide to Cooper,
20 the liquidity provider, how would Solo know
21 what stocks the plans wanted to trade in that
22 day?

23 A I don't agree with the premise of
24 your question.

25 Q Was it Solo — the first thing that

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1 would happen that day was that Solo would
2 provide Mr. Cooper the liquidity and
3 allocation and broker for the trading?

4 A Yes.

5 Q Okay. How would Solo know which
6 stocks to provide that information for?

7 A All participants across the
8 financial markets around the world who
9 participate in dividend arbitrage have the
10 same list.

11 Q Okay. But the pension plans
12 didn't — but the pension plans didn't trade
13 in every dividend issuing company in the
14 world.

15 Right?

16 A So it's even a shorter list.

17 Q So, basically, Solo understood that
18 if any one of a number of Danish securities
19 had a dividend date coming up, he's going to
20 send — Solo is going to send this liquidity
21 e-mail to Cooper?

22 A Subject to the pension plan having
23 information that it was a profitable
24 opportunity, looking at the dividend yield of
25 the company, and for its own investment.

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1 But the list was less than 20 names
2 in Belgium -- in Denmark, and similar in
3 other jurisdictions where these opportunities
4 existed. And every financial participant
5 would have the same list, the same dividend
6 amount, the same payment dates.

7 And anyone participating would be
8 looking for liquidity in the marketplace.

9 Q Okay. So Solo would inform Cooper
10 or Reibeisen which brokers to shoot these
11 liquidity e-mails out to for a particular
12 stock?

13 A Which brokers to --

14 Q Send e-mails to for a particular
15 stock?

16 A They would receive an allocation of
17 the liquidity that Solo saw in the
18 marketplace, and that sellers could source,
19 and which brokers would be able to arrange
20 purchases on behalf of our pension plans.

21 Q Okay. And that -- the allocation
22 that was provided, was that provided in the
23 aggregate for the 34 pension plans or was it
24 allocated by Solo across the 34 pension
25 plans?

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1 A Yes.

2 Q So both?

3 MR. BONGIORNO: Objection.

4 A Repeat your question?

5 Q Yeah. You said that Solo would
6 determine the liquidity that was available,
7 and would make an allocation.

8 Correct?

9 A Yes.

10 Q Okay. And would Solo allocate an
11 aggregate number of shares for all of the
12 pension plans together, or would he allocate
13 it to each plan?

14 MR. BONGIORNO: Objection.

15 A Yes.

16 Q And so he did both?

17 MR. BONGIORNO: Well, objection.
18 It's a compound question, Marc. Maybe
19 if you break it down, it would be
20 easier.

21 MR. WEINSTEIN: When you ask a
22 large question, it's not compound.

23 Q Did Solo --

24 A I'm sorry. I didn't hear your
25 question. I'm sorry. I didn't hear your

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1 question.

2 Q When -- did Solo allocate an
3 aggregate number of shares in a particular
4 stock for the 34 pension plans combined?

5 A Yes.

6 Q Okay. And from there, who decided
7 how many shares each plan would get?

8 A Solo would provide information for
9 each customer on their custodial or related
10 custodial platform.

11 Q Okay. So if you look at Step
12 Number 2 on that page, after Cooper or
13 Reibeisen send out the liquidity e-mails,
14 Step 2 is that the broker responds back,
15 saying they will seek that liquidity.

16 Right?

17 A Yes.

18 Q But in fact, everyone knew at the
19 time that the broker had already -- that that
20 liquidity was there, because Solo had
21 determined that.

22 Right?

23 A It was our expectation that the
24 liquidity would be there. We had no
25 assurances or guarantees.

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1 Q Okay. And then, Number 3 is in
2 response. The pension plan's representative
3 will send back saying, "Okay, we'll seek
4 custodial approval in the meantime."

5 Right?

6 A Yes.

7 Q And the custodian was either Solo
8 or Old Park Lane?

9 MR. BONGIORNO: Objection.

10 A At this time, it was Old Park Lane.

11 Q Okay. And the pension plans knew
12 that that approval was going to happen.

13 Correct?

14 A No.

15 Q Okay. Were there times where Old
16 Park Lane refused to accommodate one of these
17 requests?

18 A I don't recall. This -- we had
19 never traded with Old Park Lane as a
20 custodian before. So, at this time, it was
21 our expectation that our trades would be
22 approved if they complied with the terms of
23 our custodial agreement.

24 But the approval process was not
25 anything we had control over.

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1 Q Okay. Did -- once you started
2 trading using Old Park Lane, did they ever
3 deny one of these requests?

4 A I don't recall.

5 Q Number 7 says, "At market close,
6 get SKYPE message from POGO on accurate
7 closing price and forward price and confirm
8 the pricing."

9 Do you know how that forward price
10 was generated?

11 A My understanding just goes to
12 forward pricing models that I've had some
13 experience with, that the forward price
14 reflects the value of the shares expected to
15 be in the future. Because it's a forward,
16 there's an element of interest rate.

17 So it reflects an expected future
18 value plus an interest rate or time value of
19 money component.

20 Q Okay. And as part of the future
21 value, it would have to take into account
22 that there would be no dividend attached at
23 that point.

24 Right?

25 A Assuming the future security was

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1 being -- or the forward contract was being
2 executed prior to the ex-dividend date, yes.

3 Q And it was in each case.
4 Correct?

5 A Yes.

6 Q Okay. Number 9 says, "Take the
7 forward price and put it into a pre-made
8 e-mail to be sent to the forward
9 counterparty."

10 Were these -- were the forward
11 counterparty transactions all prearranged?

12 A No.

13 Q Okay. Was it your understanding
14 that once the purchases were made, that the
15 brokers would then have to just go into the
16 market and find sufficient forward
17 counterparties?

18 A No.

19 Q Was it your understanding that that
20 had been determined prior to the
21 purchase -- well, withdrawn.

22 Was it your understanding that the
23 forward counterparty trades had been arranged
24 prior to the actual purchase of the
25 securities?

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1 A No.

2 Q Okay. So what was your
3 understanding of how the brokers went out and
4 got the forward counterparties?

5 A I can't answer that because I don't
6 agree with the premise of the question.

7 Q How did -- was it the brokers who
8 went into the market -- well, withdrawn.

9 Was it the brokers who found the
10 forward counterparty liquidity?

11 A No.

12 Q Who did that?

13 A The pension plans or their
14 authorized representatives.

15 Q How did the pension plans go about
16 finding forward counterparties?

17 A Each of the plans established
18 master relationships with forward
19 counterparties before trading even began.
20 And one or more of those forward
21 counterparties would transact with the
22 pension plans on a security-by-security basis
23 the day of the trades.

24 Q How did the pension plans -- well,
25 withdrawn.

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1 Who, on behalf of the pension
2 plans, communicated with the forward
3 counterparties?

4 A The authorized trader or
5 representative of the pension plan would
6 either solicit or receive information from
7 the forward counterparty. I don't recall.

8 It's probably in these instructions
9 as to whether a forward counterparty came to
10 the plan or vice versa. But it was a
11 relationship between those two parties to
12 transact.

13 Q Okay. And on each occasion that
14 the pension plans required the forward, was
15 its liquidity met based on the requests sent
16 out by the authorized trader?

17 A I'm going to ask you to repeat that
18 one. It got me a little confused.

19 Q Sure. So I think what you're
20 saying is that on each occasion, the
21 authorized trader -- and that would be Cooper
22 or Reibeisen?

23 A Yes.

24 Q Okay. They would send out a
25 communication to a potential forward

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1 counterparty asking if they will transact.

2 Correct?

3 A No. I said that I don't recall if
4 inquiries were incoming from forward
5 counterparties offering to participate in the
6 forward contract, or outgoing. But I think
7 it was between the forward counterparty and
8 the pension plan, not involving the brokers,
9 and I just don't recall whether -- which way
10 the inquiry came from or to.

11 Q Okay. So for the forward contract,
12 the pension plan needed the forward to
13 involve the same amount of shares as the
14 purchase.

15 Correct?

16 A If you wanted to fully hedge your
17 shared position, yes, you'd have to get an
18 equal number of shares.

19 Q But you keep saying "if."
20 Isn't that what actually happened?

21 A Is it what? What actually
22 happened?

23 Q That the pension plan, each time it
24 purchased securities, got a forward contract
25 for the same amount of securities?

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1 A Yes.

2 Q Okay. And how would the forward
3 counterparty know to come to you for that
4 amount of securities that the pension plan
5 had purchased?

6 A I don't know.

7 Q And then, on the next page, there's
8 the stock borrow.

9 A Yes.

10 Q And do you see, it says, "Prepare
11 loan document 34 times. Cash collateral is
12 price times shares."

13 Do you see that?

14 A (Witness reviewing.)

15 Yes.

16 Q And that's supposed to be done on
17 "T plus 2," meaning two business days after
18 the trade?

19 A Yes.

20 Q Okay. The price that was supposed
21 to be used for the cash collateral, was that
22 supposed to be the price on "T plus 2" or the
23 price on "T?"

24 MR. BONGIORNO: Objection.

25 A I believe it's the price that the

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1 pension plan purchased the shares for.

2 Q On the trade date of the purchase?

3 A Yes.

4 Q Okay. So on this one, it says, "On
5 T plus 3, look for EML for stock borrow."

6 And does that mean that Cooper and
7 Reibeisen were to expect the stock lending
8 counterparty to send an e-mail seeing if
9 there's interest?

10 A Yes.

11 Q Okay. And how did the stock
12 lending counterparties know in each occasion
13 to reach out to the pension plans to see if
14 there was interest for a stock loan?

15 A I don't know.

16 Q But in each occasion, there was
17 interest.

18 Correct?

19 A Yes.

20 Q But you just don't know how it
21 would come about that the stock lending
22 counterparties would know each time to seek
23 these pension plans out for these
24 transactions?

25 A I don't know.

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1 Q Okay. Did you have an
2 understanding of what the stock lending
3 counterparties were doing with the borrowed
4 shares?

5 A No.

6 Q Okay. Do you know how the stock
7 lending counterparty made money?

8 A Through its stock lending business.

9 Q Okay.

10 A I'm sorry. Can you repeat the
11 question?

12 Q Yeah. The question was: How was
13 the stock lending counterparty making money
14 by borrowing the shares from your plans?

15 A In the -- in any stock lending
16 transaction, there is an interest rate that
17 is paid on cash collateral that is posted, or
18 any collateral that might be posted. And
19 there are other fees involved.

20 And so, if the interest rate earned
21 by the stock borrower on collateral posted is
22 greater than the fees, they earn money that
23 way.

24 And they can also have shares in
25 which they can do with that collateral how

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1 they see fit, if they're a securities finance
2 or stock lending firm.

3 But I don't know the business of
4 these stock lending firms beyond the
5 transactions that these pension plans
6 participated in.

7 Q Okay. In the transactions that the
8 plans participated in, was there a
9 mark-to-market adjustment each day based on
10 the -- that day's value of the shares?

11 A Not for purposes of posting or
12 returning collateral.

13 Q Is that standard in the industry?

14 A I don't know what's standard, but
15 it's -- we've been involved in transactions
16 with all types of securities and firms that
17 have done it that way.

18 Q Okay.

19 A Especially in a transaction that
20 has a hedge associated with it.

21 Q And so the stock lending
22 counterparty would post the collateral,
23 meaning the cash, right, at the time of the
24 trade?

25 A Yes.

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1 Q And then, that collateral, there
2 was no true-up on a day-to-day basis based on
3 the market value of the shares lent.

4 Correct?

5 A There was no mark-to-market in
6 terms of changing the amount of collateral
7 one way or the other between the stock
8 borrower and the stock lender. That was the
9 terms of the stock lending agreement.

10 Q Can you turn to Exhibit 1782?

11 A (Witness reviewing.)

12 Q In the e-mail on the first page,
13 you are informing the Kaye Scholer people
14 that each of the 40 plans are going to
15 establish new brokerage relationships.

16 Correct?

17 A Yes.

18 Q Okay. And the names of the brokers
19 are -- one is Lontrad.

20 Is that right?

21 A (Witness reviewing.)

22 Yes.

23 Q Okay. There's an Atlanta Capital?

24 A Yes.

25 Q And Arian Financial?

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1 A Yes.

2 Q Okay. Were you familiar with any
3 of those brokering firms prior to this?

4 A (Witness reviewing.)

5 As Lontrad was affiliated with TJM,
6 we were familiar with TJM.

7 Q Okay. You were familiar with TJM
8 because you had been using it as a broker for
9 the dividend arbitrage strategy previously.

10 Correct?

11 A Yes.

12 Q But it would — that entity itself
13 had been introduced to you by Solo?

14 A Yes.

15 Q Is that the same for the rest of
16 these new brokering firms?

17 A I don't recall if Solo introduced
18 us or some of these firms reached out to us
19 independently and inquired about establishing
20 relationships with them.

21 Q Okay. Did you do any due diligence
22 on them?

23 A To the extent that there was
24 publicly available information, we would have
25 done due diligence.

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1 payment of the additional costs for other
2 brokers and other service providers used to
3 effect the purchases and sales discussed
4 above. "

5 As of this date, was the 25 percent
6 correct?

7 A (Witness reviewing.)

8 Based on my understanding and
9 consistent with the earlier memo we looked
10 at, that 25 percent was our understanding,
11 and therefore correct.

12 Q Okay. And it says -- it's
13 25 percent -- well, withdrawn.

14 The plan was making a payment to
15 Solo of approximately 66 or 67 percent,
16 correct? A gross payment?

17 A Yes.

18 Q Okay. And then Solo was paying
19 some folks, and Solo's share ended up being
20 25 percent after paying whatever fees they
21 had to pay.

22 Right?

23 A Again, the largest fee would be to
24 the seller of the shares, because the trading
25 and pricing level was told to us to be 50/50.

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1 And so some large chunk of that would go to
2 the sellers, and they may or may not have
3 compensated other parties.

4 And based on our calculations, this
5 was the amount that Solo would be left with.

6 Q Okay. And the way they put it here
7 in this memo is that it's 25 percent "after
8 payment of the additional costs for other
9 brokers." So let's stop there.

10 So this is saying that Solo was
11 going to have to pay some of the brokers
12 fees?

13 A No, I think it's modifying the term
14 "net profits." Net profits is after payment
15 of additional costs for other brokers and
16 other service providers, although I could be
17 mistaken.

18 Q Okay. But what it's saying is that
19 what Solo is going to have to pay out of the
20 amount that is given to Solo is additional
21 costs for other brokers. That's one thing.

22 Correct?

23 A Yes.

24 Q Okay. And the brokers is the
25 entity that's just executing the trade as